BOMBAY ACT No. LIX OF 1949.[1]

[THE BOMBAY PROVINCIAL MUNICIPAL CORPORATIONS ACT, 1949.]

[*29th December 1949*]

Adapted and modified by the Adaptation of Laws Order, 1950.
Amended by Bom. 42 of 1950.
" " " 9 of 1951.
" " " 28 of 1951.
" " " 39 of 1951.
" " " 10 of 1953.*
" " " 18 of 1953.
" " " 57 of 1953.
" " " 8 of 1954.
" " " 19 of 1954.
" " " 45 of 1954.
" " " 58 of 1954.

An Act to provide for the establishment of Municipal Corporations for certain cities in the Province of Bombay.

WHEREAS it is expedient to provide for the establishment of municipal corporations in the cities of Ahmedabad and Poona and certain other cities with a view to ensure a better municipal government of the said cities; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

1. (*1*) This Act may be called the Bombay Provincial Municipal Corporations Act, 1949.

(*2*) It extends to the whole of the [2][State] of Bombay.

(*3*) This section shall come into opration at once. The remaining provisions of the Act shall come into operation in the City of Ahmedabad and the City of Poona and such other cities (outside Greater Bombay) on such dates as the [3][State] Government may, by notification in the *Official Gazette* specify in respect of each city. On the respective dates the said provisions shall apply to places outside the said cities in the manner, to the extent and for the purposes expressly provided therein.

Definitions.

2. In this Act, unless there be something repugnant in the subject or context—

(*1*) "Appendix" means an Appendix to this Act;

(*2*) "appointed day" means with reference to any local area the day on which such area is constituted the City of Ahmedabad or the City of Poona or any other city, as the case may be under section 3;

[4][(*2A*) "approved co-oprative bank" means such co-operative bank registered, or deemed to be registered under the Bombay Co-operative Societies Act, 1925, as may be approved by the State Government by general or special order;]

Bom. VII of 1925.

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[1] For Statement of Objects and Reasons, *see Bombay Government Gazette*, 1949, Part V, page 597.
[2] This word was substituted for the word "Province" by the Adaptation of Laws Order, 1950.
[3] This word was substituted for the word "Provincial", *ibid.*
[4] Clause (*2A*) was inserted by Bom. 19 of 1954, s. 2.
* This Act shall be deemed to have come into force on the 20th day of November 1951 [*vide* s. 1 (*2*). of Bom. 10 of 1953].

(*3*) "bakery or bake-house" means any place in which bread, biscuits or confectionery are baked, cooked or prepared in any manner whatsoever for the purposes of sale or profit;

(*4*) "budget grant" means the total sum entered on the expenditure side of a budget estimate under a major head as prescribed by rules and adopted by the Corporation and includes any sum by which such budget grant may be increased or reduced by a transfer from or to other heads in accordance with the provisions of this Act and rules;

(*5*) "building" includes a house, out-house, stable, shed, hut and other enclosure or structure whether of masonry, bricks, wood, mud, metal or any other material whatever, whether used as a human dwelling or otherwise, and also includes verandahs, fixed platforms, plinths, doorsteps, walls including compound walls and fencing, and the like;

(*6*) "by-law" means a by-law made under section 458;

(*7*) "cesspool" includes a settlement tank or other tank for the reception or disposal of foul matter from buildings;

(*8*) "the City" means the City of Ahmedabad, the City of Poona, or any other local area constituted to be a City under section 3;

(*9*) "the Commissioner" means the Municipal Commissioner for the City appointed under section 36 and includes an acting Commissioner appointed under section 39;

(*10*) "the Corporation" means the Municipal Corporation of the City;

(*11*) "councillor" means a person who is duly elected as a member of the Corporation under this Act;

(*12*) "cubical contents" when used with reference to the measurement of a building means the space contained within the external surfaces of its walls and roof and the upper surface of the floor of its lowest storey or where the building consists of one storey only, the upper surface of its floor;

(*13*) "dairy" includes any farm, cattle-shed, milk store, milk shop, or other place from which milk is supplied for sale or in which milk is kept for the purposes of sale or manufactured into butter, ghee, cheese, curds or dried or condensed milk for sale and, in the case of a dairyman who does not occupy any place for the sale of milk, includes the place where he keeps the vessels used by him for the sale of milk but does not includes a shop or other place in which milk is sold for consumption on the premises only;

(*14*) "dairyman" includes the keeper of a cow, buffalo, goat, ass or other animal, the milk, of which is offered or intended to be offered for sale for human consumption, and any purveyor of milk and any occupier of a dairy;

(*15*) "dairy produce" includes milk, butter, ghee, curd, butter milk, cream, cheese and every product of milk;

(*16*) "dangerous disease" means cholera, plague, small-pox or any other epidemic or infectious disease by which the life of human beings is endangered and which the Corporation may from time to time by public notice declare to be a dangerous disease;

funds, pensions, gratuities and compassionate allowances payable under the provisions of this Chapter or of the regulations or of any statement framed under this Act for the time being in force ;

(*e*) the payment of all expenses and costs incurred by the Transport Manager in the exercise of any power or the discharge of any duty conferred or imposed upon him for the purposes of, or in connection with the Transport Undertaking under the provisions of this Act or of any other enactment, including moneys which he is required or empowered to pay by way of compensation ;

(*f*) the payment of every sum payable under a decree or order of a civil or criminal court passed against the Corporation or against the Commissioner or the Transport Manager *ex-officio* in any proceeding arising out of the acquisition, maintenance or operation of the Transport Undertaking, or under a compromise effected under section 481, of any suit or other legal proceeding or claim arising out of such acquisition, maintenance or operation ;

(*g*) every sum required by the provisions of section 359 or 360 to be transferred to the Municipal Fund ;

(*h*) every sum chargeable under section 108.

Investment of surplus moneys.

358. (*1*) Surplus moneys at the credit of the Transport Fund which cannot immediately or at an early date be applied to the purposes of this Act or of any loan raised for the purposes of the Transport Undertaking may be, from time to time, deposited at interest in the Imperial Bank of India [1][or any other scheduled bank] [2][or an approved co-operative bank] [3][or be invested in public securities].

[4][Provided that the amount of money to be deposited in an [5][approved co-operative bank] shall not exceed such amount as may be specified by the State Government generally or specially in respect of any approved co-operative bank.]

(*2*) All such deposits and investments shall be made by the Transport Manager on behalf of the Corporation, with the sanction of the Transport Committee, and with the like sanction, the Transport Manager may at any time withdraw any deposit so made or dispose of any securities and re-deposit or re-invest the money so withdrawn, or the proceeds of the disposal of such securities.

(*3*) The loss, if any, arising from any such deposit or investment shall be debited to the Transport Fund.

Payments out of Surplus Balance.

Fixed annual payment to Municipal Fund.

359. (*1*) Out of the balance of income over expenditure remaining at credit of the Revenue Account of the Transport Fund at the close of each official year, after defraying or making allowance for all charges, costs and expenses payable out of the revenue of the said Fund and allowing for the retention of the cash balance specified in, or for the time being fixed under section 98 to the credit of the said Fund, there shall be transferred to the credit of the Municipal Fund the amount provided in sub-section (*2*) :

Provided that if the balance at credit of the said Revenue Account, after allowing for the matters aforesaid, is less than the amount provided in sub-section (*2*), the whole of such balance shall be transferred to the Municipal Fund

[1] These words were substituted for the words and figures " or such other bank as the Corporation may with due sanction have selected under section 83 " by Bom. 10 of 1953, s. 6.
[2] These words were inserted by Bom. 19 of 1954, s. 7(*1*).
[3] These words were added by Bom. 57 of 1953, s. 2.
[4] This proviso was added by Bom. 19 of 1954, s. 7(*2*).
[5] These words were substituted for the words " approved bank " by Bom. 58 of 1954, s. 2, Schedule.

and any deficit shall be made good to the Municipal Fund out of the Revenue Reserve Fund maintained under section 360 and if the deficit still remains, it shall be made good to the Municipal Fund out of the balance available at credit of the Revenue Account of the next or any subsequent year after allowing for all the matters aforesaid and for the amount provided in sub-section (*2*) in respect of that year.

(*2*) The amount to be transferred to the Municipal Fund under sub-section (*1*) shall be in respect of each official year such sum as the Corporation, before the beginning of that year, may determine.

(*3*) The sum to be transferred under sub-section (*1*) shall be paid into any bank with which the Municipal Fund is deposited to the credit of the said Fund by means of a cheque drawn upon the Transport Fund not later than the thirtieth day of June immediately following the close of the year in which the balance out of which the transfer is due to be made accrues.

Disposal of surplus balance of revenue.

360. (*1*) If after making allowance for the matter mentioned in section 359 there remains any further surplus balance of income over expenditure at credit of the Revenue Account of the Transport Fund, such surplus shall be disposed of as follows :—

(*a*) 30 per cent. of the surplus shall be credited under a separate heading in the accounts maintained under section 361 to a special fund to be called the 'Revenue Reserve Fund', unless the balance in the said Revenue Reserve Fund, with such credit, would exceed such sum as the Corporation shall with the sanction of the [1][State] Government fix, in which case only such sum, if any, as is required to bring the balance to the sum so fixed shall be so credited and the remainder of the surplus, up to 30 per cent. thereof, shall be added in equal shares to the amounts credited or transferred under clauses (*b*), (*c*) and (*d*);

(*b*) 30 per cent. of the surplus and such additional amount as may be available under clause (*a*) shall be credited under a separate heading in the accounts maintained under section 361 to a special fund called "the Transport Betterment Fund";

(*c*) 25 per cent. of the surplus and such additional amount as may be available under clause (*a*) shall be transferred to the Municipal Fund for credit to the Welfare Fund constituted under the rules; and

(*d*) 15 per cent. of the surplus and such additional amount as may be available under clause (*a*) shall be transferred to the Municipal Fund.

(*2*) The Revenue Reserve Fund shall be applied to the following purposes :—

(*i*) in making good or in reduction of any deficit in the amount to be transferred in any year to the Municipal Fund under section 359; and

(*ii*) in meeting any charges to be defrayed out of the Transport Fund to the extent to which the balance available in the Fund is insufficient for the purpose.

[1] This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

to any matters which could have been raised on such an appeal, and any such order against which an appeal is brought shall, if and so far as it is confirmed by the Judge, or the District Court, become operative as from the date of the final determination of the appeal.

(5) For the purposes of this section, the withdrawal of an appeal shall be deemed to be the final determination thereof, having the like effect as a decision confirming the order appealed against and, subject as aforesaid, an appeal shall be deemed to be finally determined on the date when the decision of the District Court is given, or in a case where no appeal is brought to the District Court, upon the expiration of the period within which such an appeal might have been brought, or in a case where no appeal lies to the District Court, on the date when the decision of the Judge is given.

Appeals against decision of the Judge regarding payment of expenses for works executed.

416. (1) An appeal shall lie to the District Court from a decision of the Judge regarding the amount or payment of expenses for any work executed, when the amount of the claim in respect of which the decision is given exceeds two thousand rupees :

Provided that no such appeal shall be heard by the District Court unless it is filed within one month from the date of the decision of the Judge.

(2) The decision of the Judge regarding the amount or payment of expenses for any work executed, if no appeal is filed under this section, and, if an appeal is filed, the decision of the District Court in such appeal shall be final.

(3) When an appeal is filed under sub-section (1) in respect of a decision regarding the amount or payment of expenses for any work executed, the Commissioner shall defer proceedings for the recovery of the amount determined under the said section to be due pending the decision of the District Court and, after the decision, shall proceed to recover only such amount, if any, as shall be thereby determined to be due.

Fees in appeals before District Court.

[1][**416-A.** The State Government may, from time to time, by notification in the *Official Gazette*, prescribe what fee, if any, shall be paid for an appeal to the District Court under section 411, 415 or 416 :

Provided that the District Court may, whenever it thinks fit, receive an appeal by or on behalf of a poor person, without payment or on a part payment of the prescribed fees :

Provided further that whenever an appeal made to the District Court is settled by agreement of the parties before the hearing, half the amount of the fees paid up shall be repaid by the District Court to the party by whom the same may have been paid.]

V. Proceedings before Judge.

Remedy of owner of building or land against occupier who prevents his complying with any provisions of this Act.

417. (1) If the owner of any building or land is prevented by the occupier thereof from complying with any provision of this Act or of any rule, regulation or by-law or with any requisition made under this Act or under any such rule, regulation or by-law in respect of such building or land, the owner may apply to the Judge.

(2) The Judge, on receipt of any such application, may make a written order requiring the occupier of the building or land to afford all reasonable facilities to the owner for complying with the said provision or requisition, or to vacate the premises temporarily if the said provision or requisition relates to any action under section 264, involving the safety or convenience of such occupier, and may also, if he thinks fit, direct that the cost of such application and order be paid by the occupier.

[1] This section was inserted by Bom. 45 of 1954, s. 2.

(3) After eight days from the date of such order, it shall be incumbent on the said occupier to afford all such reasonable facilities to the owner for the purpose aforesaid or to vacate the premises temporarily as shall be prescribed in the said order; and in the event of his continued refusal so to do, the owner shall be discharged, during the continuance of such refusal, from any liability which he would otherwise incur by reason of his failure to comply with the said provision or requisition.

(4) Nothing in this section shall affect the powers of the Commissioner under any provision of this Act to cause any premises to be vacated.

Power to summon witnesses and compel production of documents.

418. (1) For the purposes of any inquiry or proceeding under this Act, the Judge may summon and enforce the attendance of witnesses and compel them to give evidence and compel the production of documents, by the same means and, as far as is possible, in the same manner as is provided in the case of a Court of Small Causes by or under the Provincial Small Cause Courts Act, 1887, and in all matters relating to any such inquiry or proceeding the Judge shall be guided generally by the provisions of the said Act so far as the same are applicable. IX of 1887.

(2) If, in any such inquiry or proceeding, the person against whom the complaint or application has been made fails to appear, notwithstanding that he has been duly summoned for this purpose, the Judge may hear and determine the case in his absence.

(3) The costs of every such inquiry or proceeding as determined by the Judge, shall be payable by such parties and in such proportions as the Judge shall direct and the amount thereof shall, if necessary, be recoverable as if the same were due under a decree of a Court of Small Causes constituted under the Provincial Small Cause Courts Act, 1887: IX of 1887.

Provided that, if such inquiry or proceeding relates to a dispute regarding expenses declared to be improvement expenses by or under any provision of this Act, the amount of the costs directed by the Judge to be paid by the owner or occupier of the premises in respect of which or for the benefit of which the improvement expenses were incurred shall be a charge on such premises and may also be recovered in the manner prescribed in section 442.

Fees in proceeding before the Judge.

419. (1) The [1][State] Government may, from time to time, by notification in the *Official Gazette*, prescribe what fee, if any, shall be paid:—

(a) on any application, appeal or reference made under this Act to the Judge; and

(b) previous to the issue, in any inquiry or proceeding of the Judge under this Act, of any summons or other process:

Provided that the fees, if any, prescribed under clause (a) shall not, in cases in which the value of the claim or subject matter is capable of being estimated in money, exceed the fees for the time being levied, under the provisions of the Provincial Small Cause Courts Act, 1887, in cases in which the value of the claim or subject matter is of like amount. IX of 1887.

(2) The [1][State] Government may from time to time by a like notification determine by what person any fee prescribed under clause (a) of sub-section (1) shall be payable.

(3) No application, appeal or reference shall be received by the Judge, until the fee, if any, prescribed therefor under clause (a) of sub-section (1) has been paid.

Exemption of poor persons from fees.

420. The Judge may, whenever he thinks fit, receive an application, appeal or reference made under this Act, by or on behalf of a poor person; and may issue process on behalf of any such person without payment or on a part payment of the fees prescribed under section 419.

[1] This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.